

LAW IN BRIEF

WHAT IS THE INTERSTATE COMPACT ON MENTAL HEALTH?

The Interstate Compact on Mental Health (“Interstate Compact”) is an agreement between participating states to work together to ensure that a person with a severe mental illness or mental disability receives the most appropriate treatment he/she needs, regardless of where the person lives. There are forty-five participating states in the Compact; Nebraska is one of them. Its Interstate Compact enactment law can be found in Nebraska Revised Statutes, Chapter 83, sections 801- 805.

The Interstate Compact works to facilitate “proper and expeditious treatment of the mentally ill and the mentally deficient” in participating states.¹ The Interstate Compact finds that humanitarianism and community safety requires that the care for the mentally ill and mentally deficient is not bound by the residence of the individual, but rather that care

facilities should be made available to all in need. It focuses on the “paramount importance” of patient welfare and the responsibility of the states to provide the legal basis to ensure proper treatment.

The Interstate Compact applies to persons with mental illnesses who require care and treatment in a facility for his/her own welfare, the welfare of others, or the community, as determined by clinical authorities.²

The Interstate Compact does not apply to persons institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for

¹ Neb. Rev. Stat. 83-801, Art. I.

² Neb. Rev. Stat. 83-801, Art. II.

which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.”³

Transferring a Patient from State to State for Care or Improved Care

A person in need of institutionalization because of mental illness or deficiency is eligible for care and treatment in a state institution whether or not the individual resides in the state where the institution is located.⁵ Thus, **the Interstate Compact, at its core, provides for a legal process for a patient in one state to be transferred to another state where the care he or she needs is available or would be better.**

A patient may be transferred to an institution when clinical determinations find that the treatment needed by the patient is available in the other state or the patient’s treatment would be improved by transferring him/her to the other state.⁶

A patient may be transferred for all of his/her treatment or for only portions of his/her treatment.⁷

To transfer a patient after determining his/her need, the “Sending State” (the state where the patient is currently institutionalized) must first notify the “Receiving State” (the state with available/better treatment for the patient) before the patient’s transfer. Then, it must provide the Receiving State with all the patient’s medical and other pertinent records. Next, it should give the Receiving State the opportunity to examine the patient, if needed. Finally, the Receiving State must agree to take the patient.

A review of a patient’s treatment can be completed at any time and if it seems likely that it is in the best interest of the patient, he/she may be further transferred in compliance with the Compact.⁴

If the Receiving State has agreed to accept the patient, he/she will be treated as a new admission to the institution and treated as the same. For example, if there is a waiting list at the institution in the Receiving

³ Neb. Rev. Stat. 83-801, Art. IX(a).

⁴ Neb. Rev. Stat. 83-801, Art. III(e).

⁵ Neb. Rev. Stat. 83-801, Art. III(a).

⁶ Neb. Rev. Stat. 83-801, Art. III(b).

⁷ Id.

State, then the transfer patient will be put on the waiting list as if he/she were a new admission to the institution.⁸

Transferring a Patient from Another State for After-Care

A person may also be transferred to another state under the Interstate Compact for after care. After care is treatment or services that are provided to the patient after he/she has been discharged from an institution. To transfer a patient for aftercare, clinical authorities must determine that the patient will likely receive more appropriate care in the other state and the safety of the public will not be jeopardized by the transfer. The Receiving State will examine the person to determine whether it can or cannot accept the patient for aftercare. The Receiving State must investigate where the patient intends to reside, the name of the individual who will care for the person, and, if needed, review the patient's medical records and other pertinent information.

Costs for any transfer shall be paid by the Sending State, unless the State parties have negotiated another payment option.⁹

Guardian Implications for Patient Transfers under the Interstate Compact

A transferred patient is not required under the Interstate Compact to get a new guardian when he/she is transferred. However, it may be necessary to do so. If a substitute guardian is appointed, then the guardian in the former state is relieved of all guardian duties.

Interstate Compact Administrator

Each state designates a "Compact Administrator" who acts as the coordinator for the process under the Compact. He or she receives all the reports, correspondence, and other documents relating to the transfer of persons from one state to another. **In Nebraska, the Director of Health and Human Services or their designee serves as the Compact Administrator.**

⁸ Neb. Rev. Stat. 83-801, Art. III(d).

⁹ Neb. Rev. Stat. 83-801, Art. VI(b).